

## Factsheet 89

# Homelessness

June 2017

### About this factsheet

This factsheet explains what help is available if you are homeless or at risk of homelessness, for example because of a tenancy ending or relationship breakdown.

It looks at common causes of homelessness and what to do in each case, what to do if you urgently need a place to stay, and the criteria you have to meet to get help from the local authority (council).

Information on how to join the waiting list for council and housing association housing in your area is in factsheet 8, *Council and housing association housing*. Information about private rented housing is in factsheet 63, *Finding private rented accommodation*.

The information in this factsheet is applicable in England. Please contact Age Cymru, Age Scotland or Age NI for information applicable to those nations. Contact details can be found under Age UK at the back of the factsheet.

Contact details for any organisations mentioned in the factsheet can be found in the Useful organisations section.

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## 1 Recent developments

The *Homelessness Reduction Act 2017* makes significant changes to homelessness law. Once implemented, local authorities will be required to agree a plan of action with anyone who is found to be homeless or threatened with homelessness and eligible for assistance. If you are homeless, they must help you to find a suitable home for six months or more. If threatened with homelessness, they must help you avoid homelessness. It is likely that the Act will be implemented in 2018.

## 2 Introduction

Homelessness has a wider meaning than rough sleeping. By law, you are homeless if you have no available accommodation or if you have accommodation but it is not reasonable for you to live there anymore.

This means you can be considered homeless if you are staying with friends or family on a temporary basis, if your home is in a very poor condition, or if it is no longer suitable for you because of a disability or illness. Help is also available for people who are '*threatened with homelessness*', which means likely to become homeless within 28 days.

Local authorities must ensure information and advice about homelessness, including how to prevent homelessness, is available free of charge to any person in their district. If you become homeless, your local authority may have a duty to help you further.

The level of help you get depends on your circumstances. The authority apply a number of '*tests*' and, if you satisfy these, you are owed the '*full*' housing duty (sometimes called the '*main*' housing duty). This means the authority has a duty to rehouse you, the people you live with and anyone who might reasonably be expected to live with you. We refer to all these people as your '*household*'.

If you are homeless or threatened with homelessness, seek advice immediately. It may be possible to prevent homelessness, for example by challenging eviction or by exploring other housing options such as joining the waiting list for council and housing association housing.

Shelter has a free advice helpline, open 365 days of the year. Or contact a local advice agency like your local Age UK or Citizens Advice.

Legal aid is available in areas such as defending evictions, making homelessness applications to the local authority and establishing your rights to the family home if you have experienced domestic violence. This means you can get free legal advice and representation if you are on a low income and your case is strong enough.

The law governing homelessness help from local authorities is Part VII of the *Housing Act 1996* ('*the Act*'). This is supplemented by official guidance, the *Homelessness Code of Guidance for Local Authorities* ('*the guidance*').

### 3 Common causes of homelessness

Common causes of homelessness include a tenancy ending, relationship breakdown, or friends or family asking you to leave.

In all cases, seek advice as soon as possible. You should not leave a property or terminate a tenancy without first seeking advice as, if you later approach the local authority for help, they may say you made yourself '*intentionally homeless*' (see section 4.1). This is also a risk if you are threatened with homelessness because of something you did or failed to do, or if you are homeless after leaving prison.

#### 3.1 Tenancy ending

This is the most common cause of homelessness.

In most cases, it is illegal for a landlord to evict a tenant without a court order. Depending on the type of tenancy you have and the reason why the landlord is seeking to end it, the court may have discretion over whether or not it grants an order. This means you can argue it is not reasonable for the landlord to evict you. You may be able to challenge the reason why they want to evict you, for example if you are being unfairly accused of anti-social behaviour.

Some tenants have limited '*security of tenure*', meaning they can be evicted easily. Assured shorthold tenancies, the most common tenancy in the private rented sector, can be ended on a '*no fault*' basis after six months or after a longer fixed term has elapsed. The landlord does not have to satisfy the court they have a good reason for the eviction, but they must follow the correct procedure and meet certain other requirements.

Some tenants have even less protection. For example, if you live with your landlord and share a kitchen, living room or bathroom, you are likely to be an '*excluded occupier*'. This means the landlord does not have to get a court order to evict you.

In all cases, seek advice as soon as possible. You may be able to delay or even prevent the eviction. Legal aid is available for challenging evictions, so you may be able to get free legal advice and representation if you are on a low income and your case is strong enough.

It is illegal for your landlord to harass you or withdraw services from you with the intention of forcing you to leave your home. Acts of harassment include threats or physical violence, disconnecting the energy supply, or refusing to carry out vital repairs. If you are being harassed or threatened with illegal eviction, contact your local authority, an advice agency or the police.

For more information about tenancy rights and challenging evictions, see factsheet 68, *Tenancy rights – security of tenure*.

## Assured shorthold tenants

If you receive a notice telling you the landlord wants the property back, (a 'section 21' notice), you have the right to remain in the property until a court order is obtained and 'executed' by bailiffs.

You can be treated as homeless even though you have this right. Being treated as homeless means the local authority must provide you with accommodation if you meet the relevant 'tests', allowing you to avoid the expense and distress of court and eviction proceedings.

The guidance states each case must be decided on the facts, so authorities should not have a general policy of treating, or refusing to treat, assured shorthold tenants as homeless when they have not yet been taken to court.

It is unlikely to be reasonable for an assured shorthold tenant to continue to occupy their property after a valid section 21 notice has expired if:

- the local authority is satisfied the landlord intends to proceed with the eviction, and
- the tenant would have no 'defence' to offer in court.

Alternatively, the authority may try to persuade the landlord to withdraw the notice or allow you time to find alternative accommodation. It is possible for a court hearing a possession claim to grant an extended order giving you more time before you have to leave the property.

## 3.2 Mortgage repossession

Mortgage repossession rates have fallen in recent years, in part due to a new pre-action protocol setting out steps the lender and borrower should take to avoid court action. It states court action should be a last resort and happen only if all other reasonable attempts to resolve the situation have failed.

If you fall into arrears, the lender must advise you to make contact with your local authority or a debt advice agency such as StepChange or National Debtline. You should do this as soon as possible.

Your lender should treat you fairly, act reasonably and communicate with you clearly. If they are aware you may have difficulties with reading or comprehension, they should take reasonable steps to communicate in a way that works for you.

The lender must discuss the reasons for the arrears with you and consider if you would be able to pay them off in a reasonable time frame. They should consider other possibilities, such as changing the type of mortgage, extending the mortgage term or capitalising the arrears.

If you fail to comply with a payment agreement, the lender must not start a possession claim without giving you the opportunity to remedy the breach within fifteen working days.

There are other circumstances in which a possession claim must not be started, for example if you have claimed interest relief payments. These are payments made by the Department for Work and Pensions towards the interest due on your mortgage. They are based on a standard rate of interest, not your actual interest rate. They are paid if you receive certain means-tested benefits, but in most cases only if you make your benefit claim after taking out the mortgage.

The lender must not start a possession claim if you can demonstrate you are in financial or other difficulty and need time to seek debt advice or have an appointment booked with a debt adviser. A debt adviser should be able to help you with options such as applying for interest relief.

If your lender has already started a possession claim, seek advice immediately. If the equity in your property is low enough, you may be able to obtain free legal advice and representation through legal aid. If you are over 60 and on certain benefits or on a low income, the legal aid means test is more generous, meaning you can have more equity in your home and still qualify.

See factsheet 68, *Tenancy rights – security of tenure* if you are facing eviction because your landlord has failed to keep up with their mortgage payments.

#### Note

Under the pre-action protocol, you have certain obligations as well as rights. You may be required to explain to the court how you have complied with these. For more information, see:

[www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_mha](http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_mha)

### 3.3 Relationship breakdown

The law on the housing rights of separating couples is extremely complicated. It is important to seek advice as early in the process as possible. You may have rights you were not aware of and you may need to act fast in order to enforce them. A specialist housing organisation like Shelter is a good place to start.

It is best to try and resolve issues informally with your partner, as court action is time consuming and costly. However, you may not be able to reach agreement with your partner or may be at risk of violence from them.

If appropriate, you can try mediation. This is where an independent mediator helps you to reach agreement without taking sides. Legal aid is available for family mediation. The Family Mediation Council can help you find a local service. It is a good idea to seek advice about your rights before trying mediation, so you have a clearer sense of what a fair settlement might look like.

It is important you and your partner continue to ensure that rent and mortgage payments are made while a settlement is worked out. A local authority can say you made yourself '*intentionally homeless*' if you lose your home because of preventable arrears (see section 4.1).

### What are my rights?

The housing rights of separating couples are based on a mix of housing and family law. The broad principles are outlined here, but it is important to seek advice as every case is different.

If a property or tenancy is in your sole name or jointly owned or rented with your partner, you have rights under housing law. You cannot be excluded by your partner except by court order.

An order excluding you from your home is one of a range of '*occupation orders*' a court can make. They are usually made on a short-term basis. The court is unlikely to make an order unless one of the following applies:

- the applicant is your spouse or civil partner
- the applicant can prove they have a material stake in the property, usually because they have made financial commitments
- there are exceptional circumstances, such as domestic violence.

If the property or tenancy is in your partner's sole name, you have no rights under housing law. However, if you are married or in a civil partnership, you have '*home rights*' under family law. This means you can live in the property as if you were the owner or tenant. You can pay the mortgage or rent and cannot be excluded from the property except by court order. You can ask the court to make an occupation order giving you access to the property or requiring your partner to leave.

Home rights do not guarantee long-term rights to a property. They do not necessarily prevent the owner or tenant from selling the property or giving notice to the landlord. To do this, you would have to take further steps, such as registering your home rights as a charge on your property or seeking a court injunction to prevent your partner from giving notice.

Cohabiting partners do not have home rights and can be excluded by the owner or tenant after reasonable notice has been given. What is reasonable depends on the circumstances of the case. Cohabiting partners can ask the court to make an occupation order, but the court's powers are limited if they cannot prove they have a material stake in the property.

In the long term, properties and tenancies can be transferred from one partner to the other as part of divorce or dissolution proceedings or for the benefit of children. Seek advice if you are not planning on getting a divorce or dissolution, or if you were never married or in a civil partnership, as your options are more limited.



## Joint tenants

A joint '*periodic*' tenancy can be ended by one tenant serving a valid notice on the landlord. This is a tenancy that is not a fixed-term tenancy or where the original fixed term has elapsed. The situation may be different if you have a '*regulated*' (protected) tenancy, seek advice if you are in this position.

The tenant serving the notice does not have to obtain the other's consent and the person left in the property can be evicted without difficulty. It may be possible for the person who wishes to stay in the property to have the tenancy transferred to their sole name or have a new sole tenancy created for them. See factsheet 68, *Tenancy rights – security of tenure*, for more information.

Some local authorities are reluctant to accept a homelessness application from a joint tenant unless they first take steps to terminate the tenancy. This can cause difficulties for the person left behind, so arrangements should ideally be made to guarantee their security before a notice is served.

Under the Act, a person can be treated as homeless by the local authority if it is no longer reasonable for them to continue living in their home, so an outstanding joint tenancy should not be an automatic barrier to a homelessness application being accepted.

## 3.4 Domestic violence

Domestic violence does not just mean physical violence. In a family and homelessness context, it has been interpreted to include threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may have caused harm to the person experiencing the abuse (the '*survivor*') or their child, or which may give rise to the risk of harm.

Domestic violence can occur between partners in a relationship, between people living in the same household, between adults and children, or between people who were in a relationship or used to live in the same household.

If you are experiencing domestic violence, you have a range of housing options. It may be possible for you to stay in your home with certain safety measures in place. You may prefer to leave the home or this may be the safest option for you.

If you are a woman experiencing domestic violence, contact the National Domestic Violence Helpline on 0808 2000 247 to have a confidential discussion about your options. If you are a man, contact the Men's Advice Line on 0808 801 0327. In an emergency, for example if your safety is threatened or you are at risk of assault or injury, call the police on 999.

## Options for staying

In addition to occupation orders, there are other legal remedies survivors of domestic violence can access. These include non-molestation orders, domestic violence protection orders and restraining orders.

They do not guarantee protection and may make the situation worse. Even if an order is made, you may need to take further steps to protect or establish long-term rights to a property.

Contact a domestic violence helpline to discuss whether an order would be appropriate in your case. Ask them about other steps you can take to make your home safer, for example changing locks, putting locks on the windows or installing security equipment.

You may be able to create a sanctuary room, with safety features such as a panic alarm and reinforced door. Local authorities are strongly encouraged to run Sanctuary Schemes to deliver safety measures in survivors' homes.

## Options for leaving

Contact one of the helplines to discuss how you can make preparations to leave your home safely. They may be able to find you a place in a refuge, a safe house for domestic violence survivors (see section 11.2).

One option is to make a homelessness application to a local authority. Under the Act, you can be treated as being homeless if it is probable that returning to your property would lead to domestic violence against you, someone living with you, or someone who could be reasonably expected to live with you. The Act makes it clear that violence includes threats of violence which are likely to be carried out.

If you need to make a homelessness application, you can approach any local authority for help. The authority you approach cannot refuse to accept an application from you because you have not been living in their area. They must not refer your case to your old local authority if you would be at risk in that area.

The guidance is clear that inquiries into cases where violence is alleged need careful handling. Authorities are advised not to approach the alleged perpetrator, as this could cause further violence. They are advised that, in some cases, corroborative evidence of actual or threatened violence may not be available, for example if there were no adult witnesses or if you did not feel able to make a police report. Lack of corroborative evidence should not, in itself, be a ground for refusal.

The local authority should accept you have a '*priority need*' for accommodation if you are vulnerable as a result of leaving a property because of domestic violence (see section 4.1). They should not expect you to carry out safety measures so you can remain in, or return to, your home, or find you have made yourself '*intentionally homeless*' on the assumption such measures would have been effective. Homelessness is not intentional if it is not reasonable for you to remain in your property.

### 3.5 Asked to leave by friends or family

If you live with friends or family, you are likely to have a '*licence*' to occupy the property. This could be an '*express*' licence, meaning you made an agreement with them orally or in writing, or an '*implied*' licence, meaning there was an informal understanding that you could stay.

Licensees do not have very strong rights. They can generally be excluded from the home once reasonable notice has been given. If you made an agreement with your friend or relative, they must give you the notice specified in your agreement, or reasonable notice if nothing was specified.

If you cannot find alternative accommodation after being asked to leave, you can approach the local authority for help. They may interview your friend or relative to determine if your licence has actually been revoked.

The guidance encourages local authorities to be sensitive to situations where friends or family can no longer continue to accommodate a person with support needs, but are reluctant to formally revoke a licence before alternative accommodation has been secured.

In some cases, the local authority may ask your family if you can stay while they assist you in pursuing other housing options. This can include joining their waiting list for social housing and bidding for suitable properties. For more information, see factsheet 8, *Council and housing association housing*.

The local authority may suggest you try mediation to resolve a family dispute. However, they must be sensitive to the possibility that you may be at risk of violence or abuse in your friend or relative's home.

### 3.6 No right to succeed to a tenancy

If a tenant dies, it is sometimes possible for the tenancy to be taken over ('*succeeded to*') by their spouse, civil partner, live-in partner or a member of their family. The rules are complicated and depend on factors such as the tenancy type, the relationship between the tenant and the person wishing to take it over and whether it has been passed on before.

In most cases, there is no right of succession to a tenancy that has been passed on previously, including tenancies that have been passed from joint to sole names.

If you hope to take over a tenancy, seek advice about your rights immediately. Even if you have no right of succession, the landlord of the property may have a policy of granting a new tenancy in certain circumstances, for example to the child of deceased joint tenants.

### 3.7 Unsuitable or unaffordable housing

You can be treated as being homeless by the local authority if it is no longer reasonable for you to continue living in your property, under the Act.

It may not be reasonable to continue living in a property that is in a poor condition, overcrowded or unaffordable. The local authority can use its knowledge of the general housing circumstances in the area, for example levels of overcrowding and standards of maintenance, to decide whether it is reasonable for you to stay.

The guidance states that it would not be reasonable for someone to continue to occupy accommodation if its physical characteristics make it unsuitable, for example you are a wheelchair user and access is limited.

You can be treated as homeless if you are experiencing severe harassment at home or in the local area, for example from a neighbour. Think carefully about your security of tenure and what you hope to achieve by making a homelessness application. You may be rehoused, but this could be in private rented accommodation and/or in another area.

For more information about anti-social behaviour, see factsheet 9, *Anti-social behaviour in housing*. For information on steps you can take to improve or adapt your property, see factsheet 67, *Home improvements and repairs*. For information on how to maximise your income if you are struggling to meet your housing costs, see information guide 43, *More money in your pocket*.

### 3.8 Leaving prison

If you approach the local authority for help with homelessness after leaving prison, they should consider whether being in prison means you have a '*priority need*' for accommodation.

They may decide you have become homeless intentionally if you lost your home because of criminal or anti-social behaviour or while you were in prison. You do not establish a local connection to the area in which you were in prison.

Contact Shelter or the St Giles Trust, a charity offering advice and assistance for ex-offenders. The St Giles Trust website has region-specific information for people leaving prison, including resettlement factsheets for some local authority areas giving contact details for key services.

## 4 Asking the local authority for help

If you make a homelessness application to a local authority, they apply four 'tests' to determine what help you are entitled to, if any. You may not be entitled to any help other than general housing options advice.

If you satisfy the requirements of all four tests, the local authority has a duty to rehouse you. At that point, they can consider whether it would be more appropriate for another local authority to rehouse you.

They cannot do this any earlier in the process, for example when you first approach them for help, and must formally refer your case on themselves. They cannot simply tell you to go elsewhere.

### 4.1 The four 'tests'

#### 1 - Homeless or threatened with homelessness

The first thing the local authority should look at is whether you are homeless or threatened with homelessness. Homeless means you have no available accommodation in the UK or elsewhere which you can:

- occupy as an owner or tenant or by virtue of a court order
- occupy under an express or implied licence
- occupy because an act of Parliament or law gives you the right to stay there (e.g. a regulated tenant whose contractual tenancy has ended – see factsheet 68, *Tenancy rights – security of tenure*).

You are also homeless if you have accommodation but:

- you cannot secure entry to it (e.g. you have been illegally evicted)
- it is a moveable structure (e.g. a caravan or houseboat) and you do not have a pitch or mooring where you are entitled or permitted to place it and live in it
- it is not reasonable for you to continue to live there.

If you have accommodation outside of the UK, for example you have recently returned from living abroad but have been unable to sell your property there, you must show it was not reasonable for you to continue living in that property or country.

Reasons could include needing medical treatment that was not available there or needing to move back home to receive support from family or friends. Seek advice if you are in this position.

You are threatened with homelessness if it is likely you will become homeless within 28 days.

## 2 - Eligible for assistance

This means eligible by virtue of your immigration status. The rules are complicated and vary depending on whether you are a British Citizen, an European Economic Area (EEA) national (European Union countries and Iceland, Liechtenstein, Norway and Switzerland) or a non-EEA national.

You are eligible if you are a British Citizen, unless you recently returned from abroad and fail to satisfy the requirements of the '*Habitual Residence Test*'. This test decides if you normally live in the UK, the Channel Islands, the Republic of Ireland or the Isle of Man. There is no legal definition of what habitual residence actually is, nor how long you need to have been in the UK to establish habitual residence. For more information, see factsheet 25, *Returning from abroad*.

Other groups who are ineligible for assistance include:

- EEA nationals who are not workers, self-employed, or a family member of an EEA worker/self-employed person
- EEA nationals whose only right to stay in the UK is based on their status as a jobseeker
- non-EEA nationals whose leave to remain is time limited or subject to a condition that they do not claim '*public funds*' including local authority housing assistance.

In addition, there are rules for households with both eligible and ineligible members setting out when the needs and circumstances of the ineligible members can be taken into account.

## 3 - In '*priority need*'

Various groups of people are considered to have a '*priority need*' for housing. You are in priority need if:

- there are dependent children in your household
- you or a member of your household are pregnant
- you or a member of your household are vulnerable.

The Act states a person may be vulnerable as a result of age, a physical or mental health condition, or another '*special reason*'. These special reasons include leaving an institutional setting such as prison or the army or leaving a property because you suffered violence from another person or threats of violence likely to be carried out.

You are not automatically vulnerable if you fit one of these categories. The local authority decides whether your circumstances mean you are vulnerable. In doing so, they should consider your ability to cope if you were made homeless, comparing you to a hypothetical ordinary person who has also been made homeless, not a typical homeless person.

Your ability to cope means both your ability to find and keep accommodation and the likelihood of you suffering injury or detriment. To be found vulnerable, you must be significantly more vulnerable than the hypothetical ordinary person and likely to suffer greater harm than them when homeless. All your particular difficulties should be considered together.

If you receive support from a third party, such as a family member, doctor or social worker, the local authority can take this into account when considering whether you would be able to cope. They can only do this if they are satisfied support will be provided on a consistent and predictable basis. As stated above, '*priority need*' status is extended to the whole household if one household member is found to be vulnerable.

The local authority decides what inquiries are necessary to determine whether you are vulnerable, but they should consider and properly evaluate any evidence you submit. Try and demonstrate why you find it hard to obtain and keep housing, why you would be at particular risk of harm if homeless and why any support you receive could not be provided or would not be effective in such circumstances.

Expert evidence, such as letters from doctors or social workers, is helpful if you have it.

#### **4 - Not '*intentionally homeless*'**

The local authority can say you made yourself '*intentionally homeless*' if any of the following apply:

- you are homeless because of something you deliberately did or failed to do (a 'deliberate act or omission')
- the accommodation was available for your occupation
- it would have been reasonable for you to continue to live there.

The guidance gives examples of acts or omissions that could be regarded as deliberate:

- you chose to sell your home when you were not at risk of losing it
- you lost your home because of a '*wilful and persistent*' refusal to pay your rent or mortgage
- you disregarded sound advice from qualified persons and '*significantly neglected*' your affairs
- you voluntarily gave up a suitable property in the UK or abroad when it would have been reasonable to continue living there
- you were evicted because of anti-social behaviour, violence or threats of violence
- you left a job with tied accommodation when it would have been reasonable to continue in that role and property, unless you left the armed forces in which case different rules apply.



However, an act or omission is generally not considered deliberate if:

- it was the result of limited mental capacity or a temporary lapse in capacity caused by mental illness, frailty or an assessed substance abuse problem
- you were under duress
- you failed to pay rent as a result of housing benefit delays or financial difficulties beyond your control
- the local authority has reason to believe you are incapable of managing your affairs, for example because of your age
- you acted with imprudence or lack of foresight, but in good faith.

Investigations into intentional homelessness must be carried out on a case-by-case basis. The local authority cannot adopt general policies, such as a policy that all applicants who are homeless upon leaving prison are intentionally homeless.

Local authorities can look beyond the immediate cause of homelessness to determine whether a deliberate act or omission in the past started a '*chain of causation*'.

If you have occupied accommodation that is not '*settled*' in nature, for example you have been sofa surfing or staying in a series of hostels, the authority can trace your movements back to your last settled property and consider the reasons why you lost that accommodation.

The chain of causation can only be broken if there is a material change in your circumstances or you start to occupy settled accommodation.

There is no legal definition of what constitutes settled accommodation, but a private rented tenancy is generally settled.

A temporary arrangement with family or friends can become settled if it persists for a number of years, whatever the intention of the parties at the outset. However, the passage of time alone does not make a property settled.

If there is uncertainty over whether you became homeless intentionally, for example you became homeless a number of years ago and the facts of your case are unclear, the local authority should give you the benefit of the doubt.

There can be no finding of intentionality if a property is was not reasonable for you to continue to occupy.



## 5 Making a homelessness application

If you are homeless or threatened with homelessness and want help from the local authority, contact them and say you wish to make a homelessness application. You do not have to make an application in writing, although it is often good to have a paper trail.

Advice and assistance should be available at all times during normal office hours and authorities should have arrangements in place for 24-hour emergency cover, for example telephone access to an appropriate duty officer. The police and other relevant local services should have details of how you can make an application outside normal office hours.

If the local authority has '*reason to believe*' you may be homeless or threatened with homelessness, they must carry out inquiries to determine whether you are eligible for assistance. If they decide you are eligible, they must carry out inquiries to determine whether they have a duty to help you.

The authority must start making inquiries as soon as they have reason to believe you are homeless or threatened with homelessness.

They should aim to carry out an initial interview and preliminary assessment on the day they receive your application. They should aim to complete their inquiries and notify you of their decision within 33 working days, although you may receive a decision sooner than this.

You should be kept informed of the progress of your application and the timescales involved. You should be given a realistic expectation of the assistance you are likely to receive, but not be discouraged from making an application or encouraged to withdraw an application you have made.

If the local authority has '*reason to believe*' you may be homeless, eligible for assistance and in priority need, they must offer you '*interim*' accommodation while they make inquiries.

This interim duty to accommodate ends when the local authority notify you of their decision on your case. See section 7 below for more information.

Reason to believe is a very low threshold for taking action. If your local authority refuses to make inquiries or refuses to accommodate you while it does so, seek urgent advice from Shelter or a local advice agency like your local Age UK.

### 5.1 What information you need

When you first contact the local authority, explain why you are homeless or threatened with homelessness and, if you need a place to stay and believe you are eligible for assistance and in priority need, how you satisfy the four tests above.

That way, the '*reason to believe*' thresholds should be met.

Your application will be dealt with quicker and have a greater chance of success if you bring the following documents to the initial interview:

- proof of identity and immigration status for all household members, e.g. birth certificates, passports, residence permits
- evidence of where you live or were living, e.g. your tenancy or licence agreement, utility or Council Tax bills in your name, a letter from an official source addressed to you or saying where you have been living
- evidence of why you are homeless or threatened with homelessness, e.g. a notice or letter from your landlord or mortgage lender, eviction documents from court, a letter from friends or family saying they want you to leave
- proof of income, e.g. benefit books and wage slips
- proof of pregnancy, if relevant
- letters from professionals involved in your care, e.g. from a doctor or social worker setting out your care and support needs or from a domestic violence advocate
- crime reference numbers and copies of police reports.

This list is not exhaustive, so bring any information or documentation you think may help your case. However, it is important to ensure information is relevant and tailored to the requirements of the four tests. A list of medication you take or hospital discharge sheet can be useful in helping you to meet the '*reason to believe*' threshold for interim accommodation, but for a priority need to be established, the local authority must be satisfied your medical circumstances mean you are vulnerable. A letter from a doctor with a clear explanation of how you meet this test may be more helpful here.

Do not worry if you cannot provide these documents or cannot provide them immediately. The obligation to make inquiries rests with the local authority, you do not have to prove your case. The authority must give you an opportunity to explain your circumstances fully, particularly on matters that could lead to a negative decision.

## 5.2 Additional support

You may need additional support to make a homelessness application or during the application process. The application can be made by a person acting on your behalf, such as a social worker, solicitor, friend or relative.

You should be given a clear and simple explanation of the local authority's procedures for handling applications and making decisions. Ideally, this should be provided in written form, such as a leaflet, as well as orally. The guidance recommends that information is available in each of the main languages spoken in the area and that there is access to interpreters for languages less frequently spoken.

If you have a disability under the *Equality Act 2010*, make the local authority aware of this. Here, disability means a physical or mental impairment that has a '*substantial*' and '*long-term*' negative effect on your ability to do normal daily activities.

If you are disabled, the local authority may have a duty to make '*reasonable adjustments*' to the way its homelessness service is normally delivered. This applies if you are being put at a '*substantial disadvantage*' by a policy or a physical feature or because you are not being given enough support.

If you are disabled under the Equality Act, the '*Public Sector Equality Duty*' applies to all decisions made on your case. This is a duty to consider the need to eliminate discrimination, harassment or victimisation and advance equality of opportunity between people who share a '*protected characteristic*' and people who do not.

Disability is a protected characteristic, as are age, race and sex. If you have a protected characteristic, the local authority's inquiries must be even more careful. When making decisions on your case, they must consider any relevant aspects of the characteristic. This includes decisions about the suitability of accommodation offered. They are expected to give fuller reasons to justify a negative decision.

For more information, see factsheet 79, *The Equality Act 2010: the Public Sector Equality Duty*.

## 6 Local authority duties to help

### If you are threatened with homelessness

If the local authority is satisfied that you are threatened with homelessness and eligible for assistance, the level of help you receive depends on whether you satisfy either or both of the other tests - are you in priority need and are you unintentionally threatened with homelessness?

If you satisfy both tests, the authority must take '*reasonable steps*' to ensure you do not lose your property. This includes negotiating with your landlord if you are a tenant, or exploring options such as mediation or getting care and support at home if you are being asked to leave by friends or family.

If you are threatened with homelessness for a specific reasons, such as rent arrears, the local authority can take targeted action to address this, for example helping to resolve housing benefit delays. They should also give you information on how to apply for social housing.

If you satisfy one test but not the other, the authority must ensure you receive advice and assistance in attempts you make to save your home.

In addition, if you are unintentionally threatened with homelessness but not in priority need, the local authority has a discretionary power to take reasonable steps to ensure you do not lose your property.

## If you are homeless

If the local authority is satisfied that you are homeless and eligible for assistance, the level of help received depends on whether you satisfy either or both of the other tests - are you in priority need and are you unintentionally homeless?

If you satisfy both tests, you are owed the '*full*' housing duty (sometimes called the '*main*' housing duty). This means the authority has a duty to rehouse you and your household.

Rehousing means finding you a place to live, although this may not be a permanent council or housing association home. You may be placed in temporary accommodation while waiting for a council or housing association home to become available, or given an offer of accommodation in the private rented sector. The accommodation offered may be in another area.

If you are in priority need but intentionally homeless, the local authority must:

- house you temporarily so you have a chance to find alternative accommodation
- ensure you receive advice and assistance in finding alternative accommodation.

Temporary accommodation must be suitable and provided for a reasonable period. What is reasonable varies from case to case. The guidance suggests '*a few weeks*' can be sufficient, although some people need longer. The local authority should consider factors such as the availability of alternative accommodation in the area and your personal circumstances, such as your ability pay a deposit or rent in advance.

By way of assistance, the local authority can give you money for a deposit or guarantee your rent so you find it easier to secure a private tenancy. Alternatively, they may help you to apply for social housing.

If you satisfy neither test, the authority must ensure you receive advice and assistance in attempts you make to find alternative accommodation. This also applies if you are not in priority need but unintentionally homeless. The assistance provided may be similar to that outlined above.

If you are not in priority need but unintentionally homeless, the local authority has a discretionary power to rehouse you. They should consider whether to use this power in every relevant case, so you should always ask them to do so and provide evidence to support your case.

## 6.1 Referring your case on

The local authority can refer your case to another authority, but only after they have accepted a duty to rehouse you (the '*full*' housing duty) and if certain conditions are met.

Your household must have no local connection whatsoever to the area where you made your application (the '*receiving*' local authority area).

Your household must have a local connection to the other local authority area. If you do not have a local connection anywhere, for example if you have spent many years in prison, you can apply to any local authority and they must help you if you pass the relevant tests.

Local connection can be established in a variety of ways. You have a local connection to the receiving local authority if you:

- are '*normally resident*' in the area or have been in the past (this must be of your own choice and not, for example, a result of imprisonment or another form of detention)
- are employed there
- have family associations there
- have other special circumstances, such as a need to receive special medical or support services that are only available there.

Local Government Association guidance suggests '*normal residence*' should mean residence for at least six of the previous 12 months or three of the previous five years. The period taken into account should be up to the date of the authority's decision and include periods living in '*interim*' accommodation. Family associations normally arise if you or a member of your household have parents, adult children, brothers or sisters who have been resident in the area for at least five years at the date of the decision.

The receiving authority can only refer your case on if you have no local connection to their area. It does not matter if your connection to another area is stronger. Authorities are not required to make local connection inquiries and referral is discretionary even if all conditions are met. They can only make a referral on the basis of family associations if you indicate a wish to be near those family members.

If you have a local connection to a number of other authorities, the receiving authority should take your wishes into account when deciding where to refer your case.

The receiving authority must tell you it is planning to refer your case on. If the other authority accepts the referral, you have the right to a review of this decision. By accepting the referral, the other authority accepts the receiving authority's decision on your case. They cannot carry out their own investigations or refuse to rehouse you because you turned down an offer of accommodation from them in the past.

Your case cannot be referred to another local authority if you or a member of your household would be at risk of violence in that area or threats of violence likely to be carried out. This includes domestic and other forms of violence.

### Note

It is unlawful for a local authority to turn a homeless person away at the point of application because they do not appear to have a local connection. A person can make a homelessness application to any local authority regardless of local connection.

Local connection should only be considered once the 'full' housing duty has been accepted.

## 7 'Interim' accommodation

If the local authority have 'reason to believe' you may be homeless, eligible for assistance and in priority need, they must offer you 'interim' accommodation while they make inquiries into your case.

Reason to believe is a very low threshold for taking action. If your local authority refuses to make inquiries or refuses to accommodate you while it does so, seek urgent advice from Shelter or an advice agency like your local Age UK.

The duty to provide interim accommodation lasts until the authority notify you of their decision on your case. If you receive a negative decision, you can be made to leave after reasonable notice is given.

The authority do not have to continue to provide accommodation if you request a 'review' of a negative decision, although they may agree to do so. If you are in this position, seek urgent advice about how to request an extension of your placement.

In areas of high demand, interim accommodation is likely to be a placement in a hostel or Bed and Breakfast (B&B) with shared facilities (a 'shared facilities placement'), although the guidance states this should be avoided wherever possible.

Authorities should not routinely make shared facilities placements without considering the suitability of the accommodation in each individual case.

If one of the following apply, a shared facilities placement should be made only as a last resort and for a period not exceeding six weeks:

- you or a member of your household are pregnant
- there are dependent children in your household.



If the authority cannot avoid one of these placements, they should ensure the accommodation is of a good standard. If a lengthy stay seems likely, the authority should consider other accommodation more appropriate to your needs.

While being accommodated under the interim duty, you do not have a legal right to have the suitability of the accommodation reviewed by the authority (an '*internal review*'). You may be able to have suitability reviewed by a judge ('*judicial review*'). If the authority accepts a duty to rehouse you, your status changes and you can request an internal review.

Suitability means suitability over time, so a suitable placement as interim accommodation may not be suitable in the longer term. Seek advice if you are still accommodated in a hostel or B&B after the local authority accepts a duty to rehouse you, or if you consider accommodation originally provided on an interim basis to be otherwise unsuitable.

See section 9 for information about suitability. See section 10 for information about internal and judicial review.

## 8 The '*full*' housing duty

If you satisfy all the tests in section 4.1, the local authority owes you the '*full*' housing duty (sometimes called the '*main*' housing duty). This means they have a duty to rehouse you and anyone you might reasonably be expected to live with, unless they refer you to another authority for rehousing.

The full housing duty can be brought to an end ('*discharged*') in a number of ways. The main one is if you accept an offer of suitable long-term accommodation. This includes an offer of a tenancy from a private landlord.

The authority may register you on its waiting list for council and housing association housing (the '*housing register*') and place you in temporary accommodation while you wait for a suitable property to become available. Or they may let you stay where you are currently living, for example with friends and family, while you wait.

If you were already on the waiting list, they should adjust your priority level to account for your new status as a homeless person. For more information about the waiting list, see factsheet 8, *Council and housing association housing*.

The full housing duty also ends if you refuse an offer of suitable accommodation, be that temporary accommodation, a '*final offer*' of council or housing association housing made through the waiting list or a private rented sector offer. The authority must inform you of the possible consequences of refusing or accepting the offer and of your right to request an internal review of suitability of the accommodation.

You can request a review whether you accept an offer or not, so in most cases it is advisable to accept and then seek to challenge suitability. This way you have a safety net if the review is unsuccessful. For more information, see section 9.

The duty ends if your immigration status changes meaning you are no longer eligible for help. It ends if you become homeless intentionally from accommodation that has been provided by the authority. It does not end if you lose your priority need status.

If the duty ends because you refused a suitable offer, became ineligible or homeless intentionally, the authority has no obligation to provide any further assistance. If you are in temporary accommodation, they usually take steps to terminate your placement. Seek advice immediately if you are in this position.

### **Private rented sector offers**

The full housing duty can be ended by an offer of housing in the private rented sector. This must be a fixed-term assured shorthold tenancy of at least one year.

The offer must be in writing and inform you of the consequences of accepting and refusing, your right to request a suitability review and your right to be treated as automatically in priority need if you become homeless again within two years. This final right does not apply if you are in priority need because of a household member who is ineligible for assistance.

As with an offer of a council or housing association tenancy, you have the right to request an internal suitability review and can do so whether you accept or reject the offer.

Assured shorthold tenants have very limited 'security of tenure' and can be evicted on a '*no fault*' basis once the fixed term of the tenancy elapses. For more information about assured shorthold tenancies, see factsheet 68, *Tenancy rights – security of tenure*.

## **9 Suitable offers**

All accommodation provided under the Act must be suitable. This applies even if accommodation is provided on a discretionary basis.

It applies to interim and temporary accommodation as well as long-term offers, including '*final offers*' made through the social housing waiting list.

The accommodation must be suitable for all household members.

While the local authority is still under a duty to help you, for example if you have been placed in temporary accommodation while you wait for long-term housing to become available, suitability must be re-assessed if your circumstances change.



The criteria the authority must consider when assessing suitability include:

- your physical, medical and social needs (note an offer of supported accommodation may be considered unsuitable if it provides more support than you require).
- the condition of the property and whether it is or would be overcrowded, which may require an assessment under the Housing Health and Safety Rating System (HHSRS). For more information on HHSRS see Factsheet 67, *Home improvements and repairs*
- affordability - the local authority should consider your financial resources, the costs of the accommodation, any maintenance and child support payments and reasonable living expenses
- location
- risk of violence, including racial violence.

A property that is objectively suitable may be unsuitable in your particular case. When reviewing suitability, the local authority should consider subjective factors such as your personal characteristics, needs, hopes and fears.

### **Location of the accommodation**

When deciding whether an offer is suitable for a household, the local authority must consider its location, including:

- significance of any disruption to work, caring responsibilities or education
- proximity and accessibility of medical or other support currently provided and essential to well-being
- proximity and accessibility of local services, amenities and transport.

The courts have confirmed location is relevant even where accommodation is provided as an interim measure.

As far as reasonably practicable, authorities must make offers of accommodation within their own areas. Under the guidance, accommodation should be provided as close as possible to where you were previously living.

If an authority offers accommodation outside their area (an '*out-of-area offer*'), they must consider the distance from their area. The guidance states that an out-of-area offer is unlikely to be appropriate if suitable and affordable accommodation is available closer to the area. It states that authorities should avoid placing households in isolated accommodation away from public transport, shops and other facilities.

If you or a member of your household needs medical or other support, the authority should consider whether similar support is available near the accommodation offered and, if so, whether you would have any difficulties in accessing it that you do not have now. Non-medical support includes essential support from relatives or support groups which would be difficult to replicate in another area.

If you have children in your household, the local authority must consider the need to safeguard and promote their welfare when making an offer. It is not enough for them to consider whether a child is approaching a significant school examination; they should make further enquiries to identify their wider needs.

If you are made an offer of accommodation outside your local authority area, seek advice from Shelter or a local advice agency.

### **Private rented sector offers**

A private rented sector offer must meet additional criteria to be considered suitable, including:

- the property must be in a reasonable physical condition
- any electrical equipment provided must be safe
- it must have current gas safety record and valid energy performance certificate
- it must be licensed if the accommodation is a '*house in multiple occupation*' (HMO)
- the landlord must be a '*fit and proper person*', meaning they have not committed certain offences, behaved in a discriminatory way in the course of their work, or broken housing law or an applicable code of practice.

### **Challenging suitability**

If your local authority accept a duty to rehouse you, you have the right to an *internal 'review'* of the suitability of any offers made. This includes offers of temporary accommodation. If they agree an offer was unsuitable, they must make you a new one. If they do not agree, they may not give you any more help.

You can request a review whether you accept the offer or not. In most cases, it is advisable to accept and then request a review. This way, you have a safety net if the review is unsuccessful. Make sure you seek advice from Shelter or a local advice agency before refusing any offers.

You have 21 days from the date you receive an offer letter to submit a review request. The first day of the period, i.e. the date of receipt, is included in the calculation. It is only the review request that must be made within the time limit; you can submit full representations and evidence at a later stage.

If you wish to request a review, seek advice as soon as possible to get help with preparing your case. Contact Shelter or a local advice agency like your local Age UK. You may be able to get free legal advice and representation through legal aid if you have a low income and your case is strong enough.

Local authorities have discretion to extend the time limit for requesting reviews. If you miss the time limit, submit a request as soon as possible and give reasons for the delay.

If unhappy with the outcome of a review, you may be able to appeal to the county court. Again, seek advice and check if you qualify for legal aid.

## 10 Challenging decisions

### Local authority internal reviews

In addition to the suitability reviews above, you can ask the local authority to carry out an internal review of many decisions made under the Act.

You have the right to a review of the following decisions:

- you do not satisfy one of the four tests in section 4.1
- your case should be referred to another authority on local connection grounds
- the 'full' housing duty has come to an end.

The procedure for requesting a review is the same as for suitability reviews above.

### Other options

Decisions that do not carry a right of internal review by the local authority include refusals:

- to accept your homelessness application
- to provide interim accommodation
- to continue to provide interim accommodation while a review is carried out
- to review a decision that has already been reviewed
- to extend the time limit within which a review should have been requested.

It is possible to have these decisions scrutinised by a judge ('*judicial review*'), but the cost is likely to be prohibitive unless you qualify for legal aid. There is a strict time limit for applying for judicial review. Seek advice if you want to know more.

You can complain to the Local Government Ombudsman (LGO) if you think the local authority have not followed the correct procedures or treated you fairly.

They cannot overturn a decision made on your case, for example that you are not homeless or not in priority need. They can act as an alternative to judicial review in certain circumstances, for example if the authority refuse to accept a homelessness application from you or fail to provide interim accommodation.

Other issues they can consider include where the authority has:

- failed to make proper enquiries or made unreasonable requests for you to provide evidence before it agrees to look at your application
- placed you in a hostel or B&B with shared facilities for longer than six weeks, if this legal limit should apply
- taken an unreasonable amount of time to deal with your application and reach a decision
- wrongly closed your application or treated it as having been withdrawn
- placed you in unsuitable interim accommodation or failed to deal with repair problems
- lost, damaged or destroyed your personal belongings while they were in storage or failed to help you protect your possessions.

The LGO will not normally consider a complaint about a local authority before you have completed its internal complaints procedure. If this takes too long, for example if you have not received a final decision within 12 weeks, you can go straight to the LGO. You should normally complain to them within 12 months of the problem coming to your attention.

## 11 Emergency accommodation

### 11.1 Hostels and night shelters

If you are unable to get help from the local authority, you may be able to get a place in an emergency hostel or night shelter. These usually provide accommodation for just a few nights, but they may have a resettlement worker who can support you in gaining more permanent accommodation.

They usually accept people without money but expect you to claim benefits to pay for accommodation. You may have to share your bedroom and other facilities such as kitchens or bathrooms. Some hostels close during the day.

Call Shelter to find out if there are vacancies in your area or contact a local advice agency or your local authority. In some areas, all referrals to emergency accommodation must be made by the authority.

## **11.2 Women's refuges**

These are for women who have to leave home because of domestic violence or abuse. They are usually ordinary houses shared by women and children. You do not have to go to a refuge in your own area and the address is kept secret to protect residents. Refuge staff help you to claim benefits and find more permanent housing. Contact Women's Aid for assistance.

There are some refuges for male survivors, but spaces are extremely limited. Contact the Men's Advice Line for assistance.

## **11.3 Staying with friends**

Staying with somebody you know may be your best option in an emergency. It gives you more time to find something more suitable or permanent. You may be able to use the telephone in your local advice agency or day centre to contact your friends or relatives.

## **11.4 Bed and Breakfast (B&B)**

These are privately run and can be more expensive than hostels. Some B&Bs do not accept people claiming housing benefit and you may need money for rent in advance. You may not be allowed to stay in your room during the day and there may be no cooking facilities. A local housing advice agency or your local authority should have lists of B&Bs.

## Useful organisations

### **Citizens Advice**

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Telephone 0344 411 1444

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

### **Equality Advisory Support Service**

[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Telephone 0808 800 0082

The Equality Advisory Support Service (EASS) helpline provides information and advice about discrimination and human rights issues. Contact them if you want to know more about the *Equality Act 2010* in the context of homelessness.

### **Gov.uk**

[www.gov.uk](http://www.gov.uk)

Gov.uk is the government website that provides online information on variety of subjects and services. The *Homelessness code of guidance for local authorities* and other supplementary guidance on homelessness can be downloaded here.

### **Local Government Ombudsman**

[www.lgo.org.uk](http://www.lgo.org.uk)

Telephone 0300 061 0614

Investigates complaints of injustice arising due to maladministration by local authorities.

### **Men's Advice Line**

[www.mensadvice.org.uk/](http://www.mensadvice.org.uk/)

Telephone 0808 801 0327

Advice and support for men experiencing domestic violence and abuse.

### **National Debtline**

[www.nationaldebtline.org/](http://www.nationaldebtline.org/)

Telephone 0808 808 4000

A charity providing free, impartial and confidential debt advice.

### **Shelter**

[www.shelter.org.uk](http://www.shelter.org.uk)

Telephone 0808 800 4444 (free call)

A national charity providing telephone advice to people with housing problems on tenancy rights, homelessness, repairs and housing benefit.

**StepChange Debt Charity**

[www.stepchange.org](http://www.stepchange.org)

Telephone 0800 138 1111

StepChange offers free and independent debt advice and can help you explore your options including setting up a debt management (repayment) plan.

**St Giles Trust**

[www.stgilestrust.org.uk/](http://www.stgilestrust.org.uk/)

Telephone 0207 708 8000

A charity helping ex-offenders and disadvantaged people to move their lives forward.

**Women's Aid**

[www.womensaid.org.uk](http://www.womensaid.org.uk)

Telephone 0117 944 4411

Women's Aid is a national domestic violence charity that helps up to 250,000 women and children every year.

24-hour national domestic violence helpline is run in partnership with Refuge: 0808 2000 247 (Freephone).

## Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

### Age UK Advice

[www.ageuk.org.uk](http://www.ageuk.org.uk)

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

### In Wales contact

#### Age Cymru

[www.agecymru.org.uk](http://www.agecymru.org.uk)

0800 022 3444

### In Northern Ireland contact

#### Age NI

[www.ageni.org](http://www.ageni.org)

0808 808 7575

### In Scotland contact

#### Age Scotland

[www.agescotland.org.uk](http://www.agescotland.org.uk)

0800 124 4222

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